

## FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

### DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

1. The Cash Assistance Program for Immigrants (CAPI) is a state-mandated, state-funded program that must pay a cash benefit to aged, blind, and disabled non-citizens who successfully complete the application process. The implementing law (Welfare and Institutions Code Section 18937) requires the CAPI program be administered by counties or a consortium of counties and supervised by the California Department of Social Services (CDSS). The CAPI program is for non-citizens who are no longer eligible for the Supplemental Security Income/State Supplementary Payment program solely due to their immigrant status.
2. These regulations are being filed on an emergency basis in order to clarify the provisions of Welfare and Institutions Code Sections 18938 and 18940. Welfare and Institutions Code Section 18938 states that a CAPI applicant who is otherwise eligible for CAPI, but who entered the United States on or after August 22, 1996, is eligible only if the applicant is sponsored and the sponsor is deceased or disabled, or the applicant is a victim of abuse by the sponsor or the sponsor's spouse. Welfare and Institutions Code Section 18940 indicates that these applicants (those who entered the United States on or after August 22, 1996) are still potentially eligible for CAPI even if they do not meet the sponsor restrictions cited above, but will be subject to a 10-year sponsor-deeming period. In either case, the "entry date" is critical in determining CAPI eligibility for many non-citizens. Non-citizens who enter the United States prior to August 22, 1996 are not subject to these restrictions.
3. This issue has arisen repeatedly at administrative hearings. A delay in implementation of a clear definition of entry date could result in unnecessary administrative costs and would put CDSS at risk of legal action.
4. Failure to implement these regulations could result in aged and disabled immigrants going hungry and homeless if they do not file for CAPI based on a misunderstanding of departmental policy on the "entry date" issue.
5. For all the reasons set forth above, these regulations are needed to safeguard the general welfare of this immigrant population.

## INFORMATIVE DIGEST

These proposed regulations adopt new language in Manual of Policies and Procedures Section 49-020, which sets eligibility criteria for CAPI based, in part, on the date the non-citizen “entered the United States.” Under the provisions of Welfare and Institutions Code Sections 18938 and 18940, there are two components to CAPI which are often referred to as basic CAPI and extended CAPI. A person who entered the United States on or after August 22, 1996 is only eligible for basic CAPI if he or she is sponsored and that sponsor is deceased or disabled, or the non-citizen is a victim of abuse by the sponsor or the sponsor’s spouse. A person who entered the United States on or after August 22, 1996 who does not meet the sponsor restrictions for basic CAPI can be eligible for extended CAPI, but is subject to a 10-year sponsor-deeming period. Sponsor deeming may reduce a person’s CAPI benefit or make him or her ineligible for CAPI. A person with an entry date prior to August 22, 1996 does not have to meet the sponsor restrictions of basic CAPI and may be subject to only a three-year sponsor-deeming period.

There are currently no regulations that define the terms “entry date” or “entered the United States” for purposes of establishing eligibility for CAPI. The term is not defined in the statutes (Welfare and Institutions Code Sections 18938 and 18940) that are the basis for these regulations. The specific eligibility criteria cited above are unique to CAPI and are not specifically found in federal regulations. In fact, federal regulations reflect different definitions of “entry date” for different purposes.

Determining a non-citizen’s entry date into the United States is a critical factor in determining CAPI eligibility and/or the amount of the CAPI benefit. The proposed regulations will clarify the meaning of entry date for the purpose of CAPI eligibility, which is needed by the counties to administer the program properly and accurately. The proposed regulations will also end confusion over this issue for potential applicants. The proposed regulations reflect current departmental policy on this issue. That policy has been in effect for over two years, and has recently been incorporated in a precedential decision approved by CDSS’ Director on September 5, 2002.

## COST ESTIMATE

1. Costs or Savings to State Agencies: None.
2. Costs to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: None.

## LOCAL MANDATE STATEMENT

These regulations do not impose a mandate upon county welfare departments because they simply clarify existing regulations and reflect existing departmental policy.

#### AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Welfare and Institutions Code Sections 10553, 10554, and 18943. Subject regulations implement and make specific Welfare and Institutions Code Sections 18938, 18940, and 18944 and CDSS' Director's Designation as Precedential Decision dated September 5, 2002.